

§ 904.100

(2) By an officer thereof if a corporation,

(3) By an officer or authorized employee if a government instrumentality, or

(4) By an attorney or other person having authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or as otherwise shown for government-franked mail); or (if not mailed) as of the date actually delivered in person; or as shown by electronic mail transmission.

(d) Time periods begin to run on the day following the date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

(e) If an oral or written application is made to NOAA within 10 days after the expiration of a time period established in this part for the required filing of documents or other papers, NOAA may permit a late filing if NOAA finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as specifically provided in this part, or by order of an Administrative Law Judge (Judge) under this part, no requests for an extension of time may be granted.

Subpart B—Civil Penalties

§ 904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil penalties under the statutes cited in § 904.1(c).

§ 904.101 Notice of Violation and Assessment (NOVA).

(a) A NOVA will be issued by NOAA and served personally or by registered

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or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the permit holder or the vessel owner, if the holder or owner is not the respondent. The NOVA will contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated;

(3) The findings and conclusions upon which NOAA bases the assessment; and

(4) The amount of the civil penalty assessed. The NOVA will also advise of the respondent's rights upon receipt of the NOVA, and will be accompanied by a copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

§ 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under paragraph (e) of this section;

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes final in accordance with § 904.104. The procedures set forth in paragraphs (a) (2), (3), (4), and (5) of this section may also be exercised by the permit holder or vessel owner.